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EU Gender Equality Policies in Times of Crisis: Different Instruments, Different Actors, Different Outcomes

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Petra Ahrens and Anna van der Vleuten

1. Introduction

The financial and banking crisis of the EU and the ensuing austerity policies have resulted in an unprecedented legitimacy crisis of the European project (Borrás and Conzelmann 2007). This triple crisis not only seems to hit women harder than men but has not spared gender equality policy either. For a long time, EU gender equality policy was presented as best practice showing the way for member states, in contrast to its more modest performance in social policy (Beveridge and Velluti 2008). Overviews¹ show how over the past six decades the EU has set up a variety of specific instruments in gender equality policy, which can be roughly divided into legislation, gender mainstreaming and policy programmes. These instruments meet with heterogeneous gender regimes in member states leading to different ways of integrating supranational policies (Liebert 2003; Caporaso and Jupille 2001). As a result, EU policies have promoted change in different countries contributing to more gender equality, but they have not succeeded in creating a single EU-wide gender regime. In this regard it is important to note that the EU is not a state, it is a multi-level polity (Van der Vleuten 2007) or even a ‘moving target’ (Imig and Tarrow 2001). Policies result from the interplay at the EU-level between supranational and intergovernmental actors, most notably the Commission, the European Parliament and the Council of Ministers, as well as transnational actors such as civil society organisations and expert groups. This interplay in turn is caught in the dynamics of downloading and uploading preferences between national and European politics. Even though this multilevel political system has resulted in an impressive set of gender equality policies in the past, we will argue that the present and the future look less bright. We argue that gender equality policies are facing fundamental changes on three aspects. First, there has been a shift away from ‘hard law’ to softer new public management instruments such as ranking and benchmarking. Second, there has been a shift as regards soft law instruments making them even softer. Third, and linked to these changes, the access to policy-making for actors that promote gender equality has changed to their disadvantage.

Against the background of the financial and banking crises, we aim to provide an overview of the main changes and their implications for policy making and the variety of actors involved in this policy field. We do so by first discussing the role of hard law and court cases for promoting gender equality at the national level, as well as their fate since ‘the crises’ broke out and their ‘replacement’ by new instruments such as the Open Method of Coordination and the European Semester. By discussing gender equality policy programmes as a specific soft law instrument, we then illuminate changes over time with view to policy issues as well as the

¹ For overviews please see, for instance, Abels and Mushaben 2012, Jacquot 2015, Kantola 2010, Klein 2013, Van der Vleuten 2007, Wobbe and Biermann 2009.

relationship between supranational and national actors, and the consequences of these changes for EU gender equality policy. Finally, we discuss the role of different key actors in EU gender equality policies, showing how shifts in instruments and institutional venue affect actor constellations and their effectiveness. Overall, we speculate whether the unfortunate coincidence of moving the institutional responsibilities for gender equality further away from the EU institutions responsible for economic and employment policy while 'the crisis' hit hardest, accelerated the downgrading of legislative instruments.

2. The Gender Equality *Acquis*: Primary Law, Secondary Law and Case Law

One of the commonly used categorisations of EU instruments distinguishes between primary law comprising the treaties; secondary law covering directives, regulations and decisions; soft law including instruments such as recommendations, resolutions, Action Programmes and the Open Method of Coordination (OMC); and as a last form, the case law of the European Court of Justice (Hiou-Maniatopoulou 2004). The different categories, however, have not existed all simultaneously since the foundation of the EU but were developed while becoming necessary for different reasons, thereby shaping each period of EU gender equality policy. In this section we focus on 'hard' primary and secondary law and case law. Together these categories form the so-called "gender equality *acquis*" (Locher 2012). We will now briefly discuss the meaning and content of treaties and directives, as well as recent developments: a further development of such binding standards has become more and more improbable.

The Treaty on European Union is the agreement between the governments of the member states on which the EU is based. It has been renegotiated several times. The original Treaty of Rome (1957), establishing the European Economic Community, contained an article establishing the right to equal pay for equal work, regardless of whether work was performed by a woman or a man. The article was included for economic reasons, in order to prevent distortion of competition between different member states, but it would become the corner stone for the promotion of gender equality. Only three decades later, in the Treaty of Maastricht (1992), the treaty base for gender equality was extended to include equal treatment and equal opportunity in the labour market. In the Treaty of Amsterdam (1997), an article on the fight against discriminations (sex, race or ethnic origin, religion or belief, disability, age and sexual orientation) as well as the path-breaking provision for gender mainstreaming were included (see Section 4). And, finally, in the Treaty of Lisbon (2007), the fight against human trafficking and sexual exploitation was added as well as a Charter on Fundamental Rights.² In addition, Article 2 of the Treaty clearly states that gender equality belongs to the values upon which the EU is founded.

What is the meaning of treaty articles? They offer a basis for legislation and specify which decision making procedure is to be used. In general, however, they do not confer rights

² The Charter states fundamental rights also related to the principle of gender equality, but it operates within the limits of the Treaties. No new rights can be derived from the Charter, and its impact is expected to be limited (Ellis 2010).

directly, as they have to be activated by political or legal activism: turned into legislation, or used for interpretation by the Court if it is given the opportunity to do so.

Based on the Treaties, over the years, ten directives concerning equality between women and men have been adopted as regards access to the labour market, pay and social security, pregnancy and parental leave, self-employed, and access to and provision of goods and services. (see Table 1). They are the outcome of negotiations between the European Parliament and the Council of Ministers, based on proposals by the European Commission. After initial success in the 1970s, which saw the adoption of strong directives, further progress remained blocked by British vetoes in the Council until treaty reforms enabled the adoption by qualified majority and gave a stronger voice to the European Parliament. In addition, a parallel structure was created which involved the social partners. They could adopt EU-level collective labour agreements, which subsequently should be translated into binding directives, but this procedure has resulted in only three relatively weak directives on part-time work, parental leave and the burden of proof (Van der Vleuten 2007).

Table 1. EU secondary law in the field of gender equality³

Directive (year/number)	
Equal pay (75/117)	} <i>Replaced by:</i> Implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Recast Directive) (2006/54/EC)
Equal treatment in employment (76/207; amended by 2002/73/EC)	
Equal treatment in occupational social security schemes (86/378, as amended by 96/97)	
Burden of proof in the case of discrimination based on sex (97/80/EC)	
<hr/>	
Equal treatment in statutory social security schemes (79/7)	
Equal treatment for self-employed women and men (86/613; repealed by 2010/41)	
Pregnant Workers (92/85/EEC)	
Parental Leave (96/34/EC, repealed by 2010/118)	
Part-time Workers (97/81/EC)	
Equal treatment in the access to and the supply of goods and services (2004/113/EC)	

Source: based on Burri and Prechal 2014.

As the term *acquis* indicates, the directives constitute a set of hard provisions. Candidate countries have to show that they have adopted them and translated in national legislation in

³ In addition, directives have been adopted implementing the principle of equal treatment between persons irrespective of race and ethnic origin (2000/43/EC) and equal treatment in employment and occupation irrespective of religion and belief, handicap, age and sexual orientation (2000/78/EC).

order to qualify for EU membership. Furthermore, there is a mechanism to hold governments to their obligations, called the infringement procedure. If a government does not implement EU legislation and even a series of written and oral exchanges with the Commission cannot convince it to comply with the rules, the Commission can take it to the European Court of Justice (Court). A judgment by the Court should be complied with and usually national governments do obey the court because of the reputational damage a ruling entails. This is especially the case when there is simultaneous pressure by civil society in favour of implementation, creating a 'pincer' mechanism which 'squeezes' a government into compliance (Van der Vleuten 2005, 2007). As a result, even unwilling governments have tended to transpose EU legal standards on gender equality in national law. In addition, a second mechanism has further strengthened the provisions contained in the directives. It is the mechanism of preliminary rulings, where a national court asks the Court in Luxembourg for the interpretation of a provision. Starting in the 1970s, this type of request has led to the Court giving more than 220 rulings on gender equality issues,⁴ some of them stretching the meaning and implications of the directives far beyond what governments thought they had agreed on. To cite but three examples, the Court ruled that part-time workers are also entitled to an occupational pension; that positive action measures do not constitute discrimination provided certain conditions are fulfilled; and that equal treatment for women and men also applies to social security entitlements for lesbian and gay couples. This is how the EU became known as a champion of gender equality and was favourably viewed by women's rights groups in member states where national policies continued to discriminate against women, such as in the UK and the Netherlands (Van der Vleuten 2007). Feminist lawyers and activists brought cases for the national courts in order to obtain a decision from the Court which would push reluctant governments to implement EU directives correctly (Chicowski 2007).

Unfortunately, precisely the success of the directives has caused a boomerang effect: governments have become unwilling to commit themselves to new, costly obligations, especially in times of economic crisis when cutting back public spending in the social sphere with negative consequences for gender equality has become a usual practice (Karamessini and Rubery 2013). The latest directives are marginal revisions of existing ones. Two new proposals were tabled since the adoption of the Lisbon Treaty. The first one aims to extend minimum maternity leave. The Commission adopted it in 2008, it was supported and even strengthened by the European Parliament, and then remained blocked at the level of the Council of Ministers for years. In July 2015, struggling with the legitimacy crisis, the Commission withdrew the proposal. The other new proposal aims to achieve 40 percent of women on company boards. In November 2013, it was adopted by the European Parliament, but since then it is blocked in the Council. Against the background of a eurosceptic electorate, governments are not keen on adopting new European regulation, and definitely not on a contentious topic such as quota for women. As a result, the noble principles contained in the treaties risk to remain dormant especially in times of economic hardship.

Of course, despite their impact, directives also have their limitations. Time and again, feminist actors have questioned the effectiveness of 'hard law' in achieving gender equality.

⁴ For an overview of ECJ case law in relation to gender equality, see European Commission (2009)

After all, legal instruments establish specific, individual rights, but they do not transform underlying power asymmetries. From the end of the 1990s, a new set of instruments was developed enabling governments to show that they take social issues, including gender equality, seriously without committing themselves to legal obligations. These new type of instruments, however, differs as regards the actors involved and as regards their effectiveness, as we will show in the next section.

3. Ranking & Benchmarking: The Open Method of Coordination and the European Semester

In 1997, against the background of the incapacity of the EU to tackle the rise of unemployment and urged by the need to show that the Economic and Monetary Union in the making would entail benefits for ‘all Europeans’, the European Employment Strategy (EES) was launched. The EES is a multiannual policy programme and strategy which requires member states to coordinate their national employment policies and commit themselves to certain objectives (such as lowering the unemployment rate) (Jacquot 2015). Thanks to the Austrian ministers of women and labour, gender equality was included as a key component of the EES (Rubery 2005). Subsequently, the Lisbon Strategy was formulated in order for the EU ‘to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion’.⁵For the assessment of progress in realizing the Lisbon ambitions, a new method of policy development was put in place, the open method of coordination (OMC).

The OMC is a semi-voluntary form of coordination. It relies on a mix of ‘soft law mechanisms’ such as peer review, ranking and identification of best practices. The Spring European Council formulates guidelines based on best practices and sets numerical targets. Each member state develops its own policies to reach the targets and incorporates them in a National Action Plan for Employment. The Commission issues recommendations to individual member states and monitors the implementation of the guidelines in the Joint Employment Report. Discussion in the Council leads to a renewed identification of best practices and to a new round of the OMC cycle. The OMC aims to promote mutual learning, and to foster the generation and diffusion of new ideas and practices across Europe. This postulates the member states as a collective that is eager to learn and committed to finding the ‘best’ solutions to any of the challenges ahead. These postulations can be questioned on the basis of past performance of states in implementing gender equality directives (Van der Vleuten 2007), and there are fierce debates as to whether or not the OMC is delivering on its promises (Héritier 2003; Trubek and Trubek 2005). How effective is this practice for gender equality?

In general, one could argue that in an increasingly diverse EU, a flexible coordination mechanism enables more progress than a rigid legal instrument. That may be true, but progress seems to be marginal. For gender equality, the most relevant targets of the EES and the ensuing Lisbon Strategy are those concerning the narrowing of the gender gaps in

⁵ Cf. presidency Conclusions. Lisbon European Council 23 and 24 March 2000;
http://www.consilium.europa.eu/de/uedocs/cms_data/docs/pressdata/en/ec/00100-r1.en0.htm

employment, unemployment and pay, as well as the provision of childcare.⁶ A basic result is the ongoing production of data and indicators and a yearly ranking of the member states on these issues (Van der Vleuten and Verloo 2012). However, the targets only have ‘a general orientation function’ (Héritier 2003: 118) and member states are pressured but not compelled to meet them. The peer review and the evaluation and recommendations by the Commission constitute a monitoring mechanism without sanctions other than ‘naming and shaming’ by publishing the performance schedules. Gender equality recommendations were often only selectively picked up or completely ignored by member states (Ahrens 2002), but the Court is not involved and cannot be invoked, so the pincer mechanism cannot work.

Another result is the production of best practices in the field. Member states are ‘encouraged to benchmark their performance against the best performer in the Union’ (Héritier 2003: 117). This so-called Mutual Learning Programme in gender equality may give rise to policy learning, but it has several drawbacks, of which the most problematic one is that an unwilling government cannot be obliged to change a national practice whereas hard legal instruments can force it to do so. For instance, court cases about discrimination in social security schemes (Directive 79/7) required the Dutch and British governments to fundamentally revise their breadwinner-centred systems for pensions and disability benefits which all discriminated directly or indirectly against married women (Van der Vleuten 2007: 130-131). The good practice exchange seminars present initiatives on a wide range of topics but with no strings attached. Against a background of budgetary constraints the impact is expected to remain limited.

In 2010, the Lisbon Strategy was updated as the Europe 2020 Strategy. Its central aim is to promote an ‘intelligent, durable and inclusive’ growth (Jacquot 2015: 153). It is based on the same coordination mechanism as the OMC and monitors the economic and social reforms which member states conduct, without any possibility for sanctions. Sophie Jacquot argues that, even more alarmingly, gender equality has disappeared almost entirely from the Strategy, as the objectives and indicators of the Europe 2020 Strategy do not refer to gender and even employment indicators are no longer formulated in gender-specific terms but refer to neutral adult workers (2015: 154). As a result, the Commission has no tool to include gender (in)equalities in its evaluation of national policies and recommendations for member states.

Not only the Open Method of Coordination is an important EU soft law tool, the strategy for gender mainstreaming and policy programmes also fall into this category. In the next section we will show how, more importantly, they have been core instruments in EU gender equality policy.

4. Promoting Issues and Actors: Gender Mainstreaming and Gender Equality Policy Programmes

⁶ The relationship between gender equality and the OMC has been evaluated in detail by Fiona Beveridge and Samantha Velluti (2008).

Gender Mainstreaming⁷

The Treaty of Amsterdam (1997) has become famous among feminist scholars and activists alike due to the inclusion of the so-called gender mainstreaming article 3(2)⁸. The adoption of the article was not least the result of a coordinated lobbying by the European Women's Lobby and the Women's Rights and Gender Equality Committee in the European Parliament (Helfferich and Kolb 2001) and was broadly perceived as a milestone for gender equality (Walby 2005; Wobbe and Biermann 2009).

Gender mainstreaming is a hybrid instrument: it is a treaty article (see section 2) but without directly enforceable fundament since the ECJ cannot build a case on this obligation; there are no directives based on it, thereby leaving its implementation to soft law instruments in the end. In some cases gender mainstreaming made it into hard laws such as the regulations for the European Social Fund, but as an approach, gender mainstreaming goes beyond legislation and specific actions. By definition, the full implementation of gender mainstreaming would mean approaching all supranational policies from a gender perspective. Thereby, the policy domains have been – hypothetically – broadened extensively. Also, implementing gender mainstreaming caused the set-up of new actors such as the interinstitutional High Level Group on Gender Mainstreaming, a development we will cover further below in section.

Gender Equality Policy Programs

The European Commission exploited gender equality policy programmes as a specific soft law tool to deepening and widening gender equality policy when the Council lacked the political will to push forward gender equality issues (Hoskyns 1996; Mazey 1998). The creation of policy programmes was justified in the beginning by references to treaty article 141(2), allowing to launch positive action measures for the underrepresented sex, yet, the policy programmes became institutionalised and an independent soft law tool. Over time, every change in the political environment impacted upon policy programmes and the Commission adjusted the function of policy programmes accordingly thereby making full use of the flexibility of soft law tools.

Based on their long history, policy programmes have become one of the best-institutionalised soft law instruments of EU gender equality policy (Ahrens 2016). A total of eight programmes were adopted with continuous changes regarding time span, topics, approach, scope and actors involved that will be illustrated in more detail below. They can be roughly divided into two groups, with the first one covering the five programmes between 1982 and 2005, and the second group covering the three programmes since then. While the first five programmes were so-called action programmes suggested by the Commission and adopted by the Council of Ministers⁹, the Commission adopted the last three without the Council or the EP. The groups also differ regarding their impact on gender equality with the first group being more effective than the second. In particular, the Commission used the first policy

⁷ The origin and implementation of gender mainstreaming have been dealt with elsewhere extensively (cf. Frey 2003; Fuhrmann 2005; Jacquot 2015; Lombardo, Meier and Verloo 2009), we focus on its principles and implications only.

⁸ Article 3(2), Treaty of Amsterdam: "In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women."

⁹ The fifth programme was also adopted by the European Parliament.

programmes as their tool to gain responsibility over policy issues that were previously handled nationally. The last policy programmes indubitably lacked the active inclusion of new aspects and were more a tool maintaining the status quo (Ahrens 2016).

Creating and Establishing Policy Programmes

In 1982, the Commission proposed the first “Community action programme on the promotion of equal opportunities for women (1982-85)”¹⁰ to the Council. It was set-up at a time when hard law such as the directives (see section 2) were more and more delayed or rejected by member states as a consequence of the neoliberal turn in the 1980s. Unsurprisingly, the formulated programme goal was monitoring the implementation of directives and developing new legislative proposals.

As regards policy issues, the programme went far beyond the policy scope back then (women as workers) and covered innovative actions like women’s training networks and promoting the participation of women in information and communication technologies (ICT). Also, the planned actions acknowledged the particularities of female employment and included a section on equal treatment for immigrant women. The title already signalled the specific focus on “the promotion of equal opportunities *for women*” (authors' emphasis), a reference the Commission drew from article 141(2) allowing for positive measures for the underrepresented sex (Ahrens 2002). Thereby the Commission fostered equal opportunities for women with topics not high on the agenda of the member states even though the scope was limited to employed women and blinded out the unpaid (re)productive work women were (and are) responsible for (Ahrens 2007). The programme also supported the set-up of the Advisory Committee on Equal Opportunities bringing together representatives in charge of equal opportunities from member states administrations (Hoskyns 2000). Besides the more formalized Advisory Committee, the policy programme and its successors became generally a tool for creating transnational cooperation between national actors from public administration and from a variety of women's organizations.

The second action programme was labelled “Equal Opportunities for women. Medium-term Community programme 1986-90”¹¹ and pursued the same goals as the first one, monitoring directives and introducing positive action measures for employed women. Regarding policy issues, as an innovative field of action the portfolio added measures to reconcile professional and private life. With view to actors, it supported establishing the largest umbrella organisation of national women’s organisations in Europe, the European Women’s Lobby (EWL) (Hoskyns 2000).

After this take-off with the first two programmes, the next ones further established them firmly as a soft law tool in gender equality policy. The “Third medium-term Community

¹⁰ A new Community action programme on the promotion of equal opportunities for women 1982-85. Commission Communication to the Council. COM (81) 758 final, 9 December 1981. Bulletin of the European Communities, Supplement 1/82.

¹¹ Equal opportunities for women. Medium-term Community programme 1986-90. Commission Communication to the Council. COM (85) 801 final and final/2, 19th December 1985. Bulletin of the European Communities, Supplement 3/86. Second Council Resolution of 24th July 1986 on the promotion of equal opportunities for women, OJ C 203, 12/08/1986.

action programme on equal opportunities for women and men (1991-95)"¹² covered new topics such as women in decision-making and the equal participation of women in economic and social life and thereby extended the programme goals beyond employment policies. It also introduced Commission-led transnational programs¹³ and was particularly successful in establishing new transnational cooperation. Another change in the programme was announced in the title with "equal opportunities for *women and men*" (authors' emphasis) signalling a turn from understanding women as a deficient group of workers that need to adjust to a male norm to disadvantaged women that need different support than men (Ahrens 2002). As a consequence, the programmes presented equal opportunity policies including positive action measures as a crucial element of economic and structural policies¹⁴ (Rees 1998, Hoskyns 2000).

Transforming Policy Programmes – Transforming Gender Equality Policy

In the "Fourth medium-term Community action programme on equal opportunities for men and women (1996 to 2000)"¹⁵, the Beijing Platform for Action (UN World Conference of Women in 1995) influenced the overall design and gender mainstreaming was introduced as the main organizing principle. As a result, the Commission extended the policy issues to reconciliation and redistribution of paid and unpaid work and to the target group of disadvantaged and marginalized women. On the one hand, the programme put the Commission in the position of a mere moderator of an impressive number of sixty-nine programmes covering a broad diversity of subjects in the member states. On the other hand, the programme introduced a variety of reporting obligations for member states to the Commission, regarding the implementation of gender mainstreaming in the EU structural funds and regarding their best practices; their annual reports were subsequently compiled as the annual "Report on Equality between Women and Men"¹⁶ (Ahrens 2002).

The next policy programme, the "Programme relating to the Community framework strategy on gender equality (2001-2005)"¹⁷, brought a silent revolution, because it was accompanied by the "Community framework strategy on gender equality"¹⁸. This means that the Commission had split up its policy programme into a so-called framework strategy and an (operative) action programme. They became two separate but intertwined entities with the explicit goal of transforming structures and promoting gender equality inside and outside the Commission by means of gender mainstreaming and positive actions. The policy issues were broadened once more to cover gender inequalities *beyond* the labour market, gender equality

¹² Council resolution of 21st May 1991 on the third medium-term Community action programme on equal opportunities for women and men (1991 to 1995) (91/C 142/01).

¹³ The transnational programme was called "New Opportunities for Women" (NOW) and was financed within the framework of the EU structural policy, the European Social Fund. NOW made gender equality policy more visible in EU structural policy, although its narrow focus on women returning to the labour market attracted criticism (Schunter-Kleemann 1999)

¹⁴ Also, gender mainstreaming was mentioned on a side-note for the first time in EU policies.

¹⁵ 95/593/EC: Council Decision of 22th December 1995 on a medium-term Community action programme on equal opportunities for men and women (1996 to 2000)

¹⁶ From 2010 on published as "Report on Progress on Equality between Women and Men".

¹⁷ Council Decision 2001/51/EC of 20 December 2000 establishing a Programme relating to the Community framework strategy on gender equality (2001-2005).

¹⁸ Hereafter framework strategy. Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee, the Committee of the Regions. Towards a Community Framework Strategy on Gender Equality (2001-2005), 2000/0143 (CNS).

as an indicator for democracy and gender-based violence. In addition, all topics had to be integrated into external relations policies. The action programme helped launching policy networks for different policy issues and the Commission started developing indicators, benchmarks and monitoring mechanisms. At the end of the intertwined framework strategy and the action programme, a high number of actors far beyond the Commission became involved in gender equality policy programmes, with the trade unions and national women's organizations as main players in funded projects (Ahrens 2016).

The actions taken by the Commission with this policy programme demonstrated a fundamental change and improved gender equality policy considerably compared to the previous programmes. This can already be seen by the switching of title from 'equal opportunities' to 'gender equality' thereby marking a more comprehensive understanding of gendered inequalities and the way gender is constructed in society. Moreover, the framework strategy for the first time also strongly framed gender equality as a question of democracy, a universal right as explained earlier; a question "of all citizens women and men alike to participate and be represented equally in the economy, in decision-making, and in social, cultural and civil life"¹⁹.

In sum, the policy programmes promoted gender equality by supporting harmonization of member states policy on certain topics and by stimulating debates and actions on other topics that were seldom perceived relevant in member states policies. Acknowledging that member states were reluctant to negotiate new directives, the Commission switched to action programmes as one of the main tools in this policy field. By assisting the set-up of a variety of multi-level collaborations, the Commission was also successful in establishing supranational gender equality policy networks via the policy programmes. The Commission created their own network ties, for instance, by closely collaborating with the Women's Rights and Gender Equality Committee (FEMM) in the European Parliament (EP); both aiming to get the most out of the narrow legal possibilities by introducing innovative measures and legislative proposals with each new action programme (Hoskyns 2000). At the end of the fifth policy programme, a large amount of groups with excellent gender expertise existed that could have supported the Commission in designing the next programme; yet, after almost 20 successful years, the nature and function of policy programmes were considerably transformed as will be illustrated in the following chapter.

5. Softening the Soft Law: Weakened Gender Equality Policy Programmes

The Framework Strategy came to an end at a time when in 2004-2005 the EU experienced its biggest enlargement ever with ten Central and Eastern European Countries and at the same time, faced a serious setback with the failed ratification of the "Treaty establishing a Constitution for Europe". Against this background, the Commission reversed its established approach for policy programmes: the "Roadmap for equality between *women and men* 2006-

¹⁹ Cf. Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Towards a community framework strategy on gender equality (2001-2005), COM/2000/0335 final, p. 2.

2010”²⁰ (authors' emphasis) changed the format and function of this soft law tool; one already visible in the title with switching back from ‘gender equality’ to ‘women and men’.

The certainly most important change was that the Commission gave up on gender equality action programmes with an own budget. The Commission claimed that other Community programmes such as PROGRESS, DAPHNE or the structural funds were providing the necessary resources (Ahrens 2016). Nonetheless, already in 2008 the specific gender branch in PROGRESS only amounted to nine per cent while the original budget foreseen for gender equality was twelve per cent. The missing three percentage points were spent on the other policy areas and this loss was irreversible as the 2012 analysis of the PROGRESS implementation revealed. Even though the planned share of commitments for gender equality had been raised above 13 percent since 2011, the actual expenditure was alarmingly low. The gap between plans and actual expenditure almost only occurred for gender equality (European Commission 2013: 66).

Furthermore, the Commission gave no indication for the overall budget earmarked for gender equality and the FEMM Committee of the EP failed to hold the Commission responsible. Remarkably, the consciousness about the missing roadmap budget disappeared the moment it was decoupled from an action programme (Ahrens 2016), mainly because the FEMM committee was not responsible for the other budget branches which fell under the responsibility of other EP committees²¹. Also, the gender equality unit of DG Employment was not able to control the budget expenditure, because a different Commission unit was in charge of PROGRESS (Ahrens 2016).

In addition, the roadmap was the first gender equality policy programme that did not foresee any new legislative proposals nor - more importantly - any actions with direct outreach to member state level or the social partners. On the contrary, the Commission kept other actors at a distance for the sake of fostering gender mainstreaming implementation in all Directorate Generals (DGs) which boiled down to engaging in an inward-looking time-consuming process (Ahrens 2016).

While some of the issues of the framework strategy (2001-2005) and the roadmap (2006-2010) seemed similar, it is crucial to note that the roadmap reduced broader social justice claims to equal economic independence. A new section in the roadmap on promoting gender equality in external and development policies revealed the shifted focus on exporting the EU gender regime instead of tackling more efficiently remaining gender gaps in the EU (Ahrens 2008).

Further changes can be detected with a view to how topics were framed. The framework strategy featured 'Promoting Equal Participation and Representation', terms linked to descriptive and substantive representation, whereas the roadmap only announced 'Equal Representation in Decision-making', a move that might have limited the scope of actions (Ahrens 2008). Also, the roadmap priority areas of action covered Commission activities *only*. No actions were foreseen with member states, women's organisations and/or trade unions, which was a core element of previous programmes. In addition, the roadmap did not propose new actions, but offered rather a compilation of existing activities or provided a

²⁰ Hereafter roadmap. Cf. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A Roadmap for equality between women and men 2006-2010. COM (2006) 92 final.

²¹ PROGRESS, for instance, fell under the responsibility of the Committee on Employment and Social Affairs.

vague reference to gender mainstreaming and monitoring. It did not contain measures to monitor its implementation progress, but compiled indicators on gender equality progress instead (Ahrens 2016).

The seventh policy programme, "Strategy for equality between women and men 2010-2015"²² did not bring positive change: the policy issues stagnated as did the scope of accountability and monitoring; the Commission did not set up a new action programme. The policy programme focused on describing the situation of women and men without even mentioning the different impact of the financial and economic crisis on women's and men's economic and employment situation (Karamessini and Rubery 2013). The highlighted shift from broad social justice claims to employment and economics as core topics was completed when adopting this latest policy programme.

One of the factors ostensibly explaining the deterioration of the policy programmes might be that in 2010 the responsibility for gender equality policy moved from DG Employment to DG Justice. Since the possibilities of one DG in controlling another DG are rather limited (Hartlapp et al 2013), the Commission officers who drafted the programme in 2010 were not in charge of this policy field anymore and could not support further development. Not only has this moved gender equality policy away from those managing the economic and fiscal crisis, the problem was rather the loss of expertise on gender equality in its original home DG Employment at a time when 'the crisis' hit hard.

By the end of 2015 the Commission further downgraded the accountability of gender equality policy programmes when she published its "Strategic engagement for gender equality (2016-2019)"²³ in the form of a commission staff working document; an internal document of lowest status even without approval by the College of Commissioners. With the beginning of 2015 rumours appeared that the Commission was undecided whether to adopt a new gender equality policy programme at all. The Commission's reluctance helped activating supranational gender equality actors. Since early 2015 the European Women's Lobby started a European-wide campaign, not only for the continuation of the programmes but for extension and a stronger commitment (European Women's Lobby 2015). In June 2015, the Commission started a public online consultation 'Equality between women and men in the EU' that still left open whether there would be another policy programme. The consultation offered the chance to vote on the relevance of gender equality topics and to select a limited number of specific actions.

This last twist in the history of gender equality policy programmes might become the final criterion for estimating the future role of soft law in EU gender equality policy-making. When approving the Barroso-Commission in 2010, the EP strengthened its role by forcing the Commission to consult the Parliament in certain cases before adopting soft law²⁴. The EP insisted on this obligation because of the well-known role of soft law as predecessors of hard law. The FEMM Committee of the EP in an – as the authors would argue – act of deliberative interpretation of Commission consultation obligations, contributed to the debate about the

²² Cf. Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. Strategy for equality between women and men 2010-2015, COM (2010) 491 final.

²³ Cf. https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/strategic_engagement_for_gender_equality_en.pdf (9/9/2016).

²⁴ Cf. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0009+0+DOC+XML+V0//EN> (9/0/2016).

future of gender equality policy programmes by adopting the “Report on the EU Strategy for equality between women and men post -2015” (European Parliament 2015). The report proves the decreasing openness and access to the EP (see section 7) as well as the diverging, not to say contrary ideas about what gender equality actually means. After a heated debate in which nationalist conservative groups tried to prevent its adoption, the report was adopted in plenary. Twenty national gender equality ministers stressed their interest in a renewed Commission policy programme, thereby setting the stage for debates among core supranational gender equality actors (die Standard 2015). Despite this pressure from the EP and from member states, the Commission decided not to proceed with policy programmes in the form of Commission communications and published the staff working document. While this needs further investigation, we assume that this format was an uncomfortable compromise to satisfy the EP and member states by not abandoning the programmes entirely. In the following section we will describe in more detail the key (feminist) gender equality actors, how their role changed over time and which consequences this brings about for EU gender equality policy.

6. Actors Constellations

The previous sections have presented us with an overview of the different policy instruments in the domain of gender equality as well as the changes they have undergone. These changes in instruments cause the entrance of key actors in the political arena or their disappearance from it, and in turn, these (dis)appearances influence the outcome of the policy process. Research indicates that the strength of EU gender equality policies was a result of two characteristics of this policy arena: the presence of velvet triangles and the working of pincers. Velvet triangles are constituted by privileged, personalized links between committed feminist actors at different positions in the policy arena: academics and experts, members of parliament, and administration (Woodward 2004). They have a strong agenda setting function, they help pushing a proposal through the decision making process and critically monitor further developments. The pincer mechanism is at work during the stage of implementation. It refers to the double pressure needed to push unwilling governments and make them adopt as well as implement far-reaching instruments. This pressure is exercised by the Commission, the EP and the Court at the supranational level, as well as women’s groups, feminist lawyers and politicians at the (sub)national level, increasing the costs of non-compliance for a reluctant government (Van der Vleuten 2005). In this section, we argue that over the past decade both aspects have changed. We will turn our attention to the actor constellations involved in each policy type and the implications which recent shifts in policy instruments have for the position of feminist actors and the defence of gender equality in times of crisis; how do these changes influence the velvet triangle and the pincers?

The first type of instruments, ‘hard law’ such as gender equality directives, involves the Commission as agenda setter who formulates the initial proposal, as well as the European Parliament (EP) and the Council of Ministers of Social Affairs (with the acronym EPSCO), who amend and adopt or reject the proposal. A major institutional shift occurred in 2011, when José Manuel Barroso, president of the Commission, moved the portfolio of gender

equality from the Commissioner of Social Affairs to the Commissioner of Justice, Consumers and Gender Equality; and at the administrative level, from the Directorate General for Employment and Social Affairs (DG EMPL) to the Directorate General of Justice and Consumers (DG JUST) (Van der Vleuten 2012). This was a major change, because it resulted in a loss of expertise and access, as well as a change in substance. In fact, since the 1970s, the Equal Opportunities Unit (EOU) within DG EMPL had accumulated expertise on gender equality. It had attracted committed ‘femocrats’, it had established a range of thematic networks with feminist experts in the member states, and it had developed close links with women’s groups through the European Women’s Lobby, and with the FEMM Committee of the EP. Also, the substance of gender equality policies changed, because gender equality no longer was an objective of economic and social affairs, but it became framed as a human right and part of the broader fight against discrimination. In the EU, Justice and Home Affairs is a relatively new supranational policy domain, as until recently national governments fully controlled policy making. It is not part of the core of EU ‘hard law’ policy making but has always focused rather on coordination of national policies. Moreover, human rights concerns are mainly ‘externally oriented’ towards candidate countries and external trade and development partners of the EU, but they do not have a strong treaty base enabling the development of strong binding instruments for ‘domestic use’ on combating domestic violence, for instance. The Fundamental Rights Agency (FRA), which was set up in order to advise the Commission on human rights issues, takes a legal approach. It considers gender as one of several grounds for discrimination rather than gender equality as a specific aim cross-cutting all policy domains. In short, the velvet triangle has been stretched and weakened by the organizational shift.

Secondly, as we discussed in section three, ‘hard law’ has been replaced increasingly by other policy instruments such as the social OMC and the European Semester. This shift entails the inclusion of new actors and the exclusion of others, but most of all required and promoted a different public service. In the 1970s and 1980s, DG EMPL and especially the Equal Opportunities Unit (EOU), had a militant approach to gender equality and maintained close personal contacts with women’s organizations and feminist experts. The EOU acted as an agenda setter and critical watchdog. The spreading of New Public Management ideas led to a ‘professionalization’ of the EOU, encouraging mobility of public servants and reducing the autonomy of the Unit. All expert networks were disbanded except for the legal and the labour market networks. In a second wave of reforms, only a single network was maintained (ENEGE, the European Network of Experts on Gender Equality) which no longer was asked to provide the Commission with innovative ideas and critical analyses, but to be a service provider which delivers accurate information. After endless negotiations the European Institute on Gender Equality (EIGE) was set up with the idea to create an independent structure for the coordination and exchange of information and knowledge (Jacquot 2015). This information is needed for the production of rankings, best practices and policy recommendations in the framework of the OMC and the European Semester. In these processes, an increasingly dominant role is played by the member states and their representatives. There is a strong presence of the member states in EIGE, as opposed to their absence from the previous activist networks. In 2001, the High Level Group on Gender

Mainstreaming, composed of national civil servants, took over the responsibility for the annual report on gender equality from the EOU. More recently, gender equality has become even less visible. The European Semester requires in-depth analysis of member state policies as to their contribution to competitiveness, employment and the functioning of EMU (Zeitlin and Vanhercke 2014). Accordingly, monitoring is shared by three directorate-generals, namely DG Economic and Financial Affairs (DG ECFIN), DG EMPL and DG TAXUD (responsible for taxation and the customs union) under the coordination of the Secretariat-General (SG) which constitutes the Commission's president staff. They advise member states on a broad range of issues such as real estate prices, pensions and unemployment benefits. This implies that the preeminent DG ECFIN also gives its perspective on labour market issues. In this process, gender equality has been 'mainstreamed away' and been subordinated to fiscal and monetary objectives (Jacquot 2015). Crucially, the EP and the Court are kept outside the process. There is no 'pincer mechanism', because the tools to obtain compliance with the objectives are purely intergovernmental and consensual, such as the discussion of best practices and rankings (Van der Vleuten and Verloo 2012). Litigation, let alone strategic litigation, which has been used in the past as a crowbar to promote implementation of higher standards (Cichowski 2007), simply is not possible when there is no binding legal instrument. In 2014, the EWL and trade unions have joined forces in the European Semester Alliance, with the aim to monitor attention given to social and gender equality issues, but their position is marginalized in the deliberations between ministers and diplomats based on the Commission reports. Also, any recommendation has to match the logic of DG ECFIN, which sits uneasily with the promotion of gender equality.

A third change has resulted from the increase of eurosceptic, populist and conservative political parties in the member states and their presence in the EP, including in the FEMM committee. The FEMM committee used to be an activist promoter of gender equality which became famous for the hearings it organized and its own-initiative reports, but its increasingly mixed composition has contributed to a loss of militancy (see previous section). Also in this respect the velvet triangle has lost some of its mobilizing impact. In addition, the broad support in the EP in general for new far-reaching gender equality policies seems to have waned and the recommendations from the FEMM committee are not taken seriously by other committees (Jacquot 2015).

Table 2. Feminist actors in the European policy arena

Instrument	Key Actors involved at European level	Actors involved w/ feminist focus
‘Hard law’: gender equality directives on socio-economic topics	Commission: DG EMPL Council: EPSCO (Ministers of Social Affairs) European Parliament Court	Femocrats (EOU) in DG EMPL EWL EP FEMM Feminist lawyers network
Social OMC, European Semester/ Europe 2020	DG ECFIN, EMPL, TAXUD ECOFIN (Ministers of Finance) and EPSCO (Ministers of Social Affairs), Council committees	EWL & Trade unions → European Semester Alliance
Gender equality policy programmes	Commission EP EPSCO (Ministers of Social Affairs)	Femocrats (EOU) in DG EMPL EP FEMM EWL
Gender equality policies and human rights	DG JUST JHA (Ministers of Justice) European Parliament	FRA, EIGE EWL EP FEMM

Changes in instruments as well as changes in the political climate have disempowered actors promoting gender equality and, as a result, two characteristic mechanisms in this domain, the velvet triangle and the pincer mechanism, have lost importance.

7. Conclusion

In this chapter, we have discussed EU gender equality policy from the angles of instruments and actors, and how they can be understood in the context of European integration over time. The successful adoption of ten directives on gender equality, hard law instruments, involving feminist actors and creating ‘pincers’, came to a halt each time when in the face of crisis member states did not want to be bound by such far-reaching commitments. However, precisely in times of crisis the EU is expected to show a social face and alleviate conditions of unemployment and precariousness. As a result, we have seen how hard law instruments have been replaced by different types of soft law tools, including the Social OMC, the strategy of gender mainstreaming and gender equality policy programmes. These programmes have undergone profound changes as well. They started as a compromise-driven process between Commission and member states via the adoption in the Council. The European Parliament and civil society (in particular women's organisations) were able to participate in negotiations and the latter also in implementing the policy programmes. The programmes helped harmonizing member states policies through transnational projects and created a common understanding of EU gender equality policy goals. Policy programmes were the Commission’s tool to develop

innovative policies and their specific gender regime. With the adoption of the roadmap in 2006, gender equality policy programmes lost their innovative potential, their budget, and their role for harmonizing member states policies. They became an ever softer soft law tool, first as Commission communications without Council adoption and ultimately reduced to a Commission staff working document. In the last section we linked these developments to actor constellations and showed how feminist actors have lost access in three respects: because of the replacement of hard law by soft law instruments, which means that no new options for strategic litigation open up; because of the reorganization of the Commission bureaucracy, which has resulted in a loss of access and expertise as well as a shift from feminist to technocratic policymaking; and because of the changes in the composition of the EP.

As a result, nowadays EU gender equality policies cover a wide variety of topics going beyond the labour market, and include a variety of tools with different degrees of effectiveness. However, in times of crisis these policies are under pressure. In addition to the enduring economic and financial crisis, there has been a deepening of the legitimacy crisis because the EU does not seem to be able to deal with the consequences of the ongoing war in Syria and the rise of the so-called Islamic State in the Middle East. The influx of large numbers of refugees and terrorist attacks almost have pushed economic and monetary issues to the second place. Still, in all these debates gender concerns are absent and openings are not self-evident given the actors involved.

In a broader context, it would be necessary to also take into account further urgent gender equality policy issues like reproductive rights, citizen rights for refugees and migrants, and inter/transsexual rights that are not visible on the supranational level. In other words, a revived feminist utopia of what a different, more gender-equal European society should look like is required; an idea that does not deliver an understanding of equality as adjusting females* to white heterosexual males thereby ignoring other social spheres that follow different logics such as the reproductive sphere and 'care' in a broad sense.

8. Questions

- What have been crucial changes in the EU gender equality policy over time?
- How are these changes influenced by and influencing the triple crisis the EU is facing?
- How can the EU promote gender equality in the future? Discuss different options with view to legislative instruments and actors available.

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